

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-096

March 31, 1998

WALDOBORO WATER COMPANY
Application for Authority
to Sell and for Authority
of the Town of Waldoboro
to Purchase the Assets of
Waldoboro Water and for the
Town to Operate a Water Utility

ORDER APPROVING
TRANSFER

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY OF ORDER

We approve the sale of the Waldoboro Water Company to the Town of Waldoboro and authorize the Town to operate a water utility.

II. BACKGROUND

On February 4, 1998, the Town of Waldoboro (Town) and the Waldoboro Water Company (WWC or Company) filed a joint application requesting authority for the sale of the WWC to the Town. The terms of the sale were arranged on behalf of the Company by R. Steven Thing, a Trustee appointed by the Kennebec County Superior Court, who was charged with conducting the sale of the Company to an entity capable of bringing the system into compliance with federal Safe Drinking Water Act requirements.

Mr. Thing and other witnesses presented extensive evidence in support of the fairness of the sale price of the utility, the property included in the sale, and other terms of the sale to the Kennebec County Superior Court on March 16, 1998 whereupon the Court approved the sale of the WWC to the Town on the terms arranged by the Trustee.¹

The Court found that the fair market value of the assets, excluding cash on hand, is \$350,000 as set forth by the American Appraisal Associates' appraisal and that the sale of the property

¹Kevin Concannon, Commissioner, Dept. of Human Services, State of Maine v. Waldoboro Water Co., & Paul Ring d/b/a Waldoboro Water Co., Kennebec County Superior Court, CV-95-387, Order dated Mar. 16, 1998).

to the Town would be in the best interests of the Company, its customers, the Town, and the State of Maine. The Court also approved a sale price in excess of the appraised fair market value of the utility assets as an operating utility business (\$387,200.00) and authorized the Trustee to execute the sale.

In addition, the Court denied a Motion for ADR Arbitration filed by the owner, Paul D. Ring of the WWC, and two other persons² and ordered that, upon consummation of the sale, the Interim Receivership³ would terminate.

III. LEGAL STANDARDS

Section 1101 of Title 35-A Maine Revised Statutes Annotated requires a utility to seek Commission authorization of any sale or other disposition of property that is necessary or useful in the performance of its duties to the public, or the transaction is void. Section 1104 requires Commission approval before any public utility may abandon all or part of its plant, property or system necessary to providing utility services or to discontinue service. See 35-A M.R.S.A. §1104.

Finally, section 2102 requires that any entity proposing to serve as a public utility (in this case, the Town) in or to any municipality in which another public utility is furnishing or is authorized to furnish similar service, acquire Commission authority to serve.

Our determinations under these statutory sections are governed by a finding that the proposal is consistent with the public interest pursuant to the general regulatory standards established in Title 35-A.

IV. DISCUSSION

To determine that the proposed sale of utility property and transfer of service authority is consistent with the public interest, we will review the terms of the sale, the sale price, the assets being transferred, the capability of the purchasing entity to finance and operate a public utility, and the proposed rates and terms of service following the sale. All but the last of these matters have been explicitly considered and approved by the Superior Court.

² The Court had denied a similar arbitration request filed by Louis F. Abbotoni and Mr. Ring on March 10, 1998.

³ Consumers Maine Water Company (CMWC) was appointed by the Court on September 18, 1996 to operate the utility until the Company could be sold to a capable entity.

The Town proposes to operate the system as a municipal water department and to serve initially under the rates and schedules currently in effect for the Company. The Town has obtained a commitment from the U.S. Department of Agriculture for funds to both acquire the assets and to repair and improve the water supply and delivery system bringing it into compliance with federal requirements. Finally, the Town proposes to operate the system initially pursuant to an operating agreement with the Consumers Maine Water Company (Consumers Maine). Thereafter, the Town will evaluate the means by which it will permanently operate the system, once the improvements for compliance with the SDWA are identified. Consumers Maine, an experienced water utility serving many municipalities within Maine, has been operating the system as a court-appointed receiver since September 1996.

We concur with the Court's finding that the purchase and sale as proposed is consistent the public interest and grant the necessary approvals. Because we have not explicitly reviewed the operating agreement between the Town and Consumers Maine, we make no particular finding as to the reasonableness of the terms of that agreement. However, in the absence of evidence to the contrary, we believe that the Town will fulfill its obligation to act in the best interests of its citizens and ratepayers. The Town should report to us its proposal for permanent operating arrangements once they have been determined.

Accordingly, we

O R D E R

1. That the Waldoboro Water Company, by and through its Trustee, is authorized to sell and transfer its property, franchises, permits and rights to the Town of Waldoboro as set forth in the Purchase and Sale Agreement executed December 31, 1997 and find that this transfer is consistent with the public interest;

2. That the Town of Waldoboro is authorized to furnish water utility service in or to the Town of Waldoboro once all necessary Court and voter approvals are obtained;

3. That upon consummation of the sale and the commencement of service by the Town of Waldoboro, that the Waldoboro Water Company shall abandon service and will have no further authority or obligation to provide service in this State.

4. That following consummation of this sale and until further order of this Commission, the Town of Waldoboro shall provide water service in the area now being served by the

Waldoboro Water Company pursuant to and in accordance with the filed tariffs, including terms & conditions, of the Waldoboro Water Company; provided, however, that the Town of Waldoboro shall, upon transfer of the water system assets to it, file said tariffs, including terms & conditions, with the Commission under its own name;

5. That the Waldoboro Water Company shall submit to the Commission a copy of its final balance sheet within 60 days of the date of the sale;

6. That the Town of Waldoboro shall supply the Commission with the following within 60 days of the date of the purchase:

- a) A copy of the entry on the books recording the acquisition of the Waldoboro Water Company; and
 - b) A copy of the opening balance sheet of the Town of Waldoboro's Water Division following acquisition.
7. That a copy of this Order shall be sent to all parties.

Dated at Augusta, Maine, this 31st day of March, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSINERS VOTING FOR: Welch
Nugent
Hunt